

REMARKS

The Examiner is thanked for having graciously held a telephone interview with the undersigned on December 8, 2004.

The October 22, 2004 Office Action and the pending claims are discussed. It was agreed that the present application would be in condition for allowance with the following amendments: (1) canceling claim 84 without prejudice, (2) amending claim 85 to emphasize that the "hydrate/solvate contains a solvent selected from the group consisting of ethanol, 2-propanol, n-propanol, formic acid, n-butanol, pentanol, propylene glycol, acetone/formic acid, cyclohexane, and acetonitrile," and (3) amending claim 86 to delete the reference to azithromycin tetrahydrofuran solvate form Q and azithromycin tert butyl methyl ether solvate form R.

Claims 84-93 and 123 are pending in the present application. Applicants have canceled claim 84 without prejudice and amended claims 85 and 86. Support for the amendments to claims 85 and 86 can be found, *inter alia*, in the original claim 84. Therefore, the present Amendment is fully supported by the original specification and does not raise any issue of new matter. Accordingly, entry of the present Amendment is respectfully requested. Upon entry of the present Amendment, claims 85-93 and 123 will be under examination.

PROVISIONAL REJECTION OF CLAIM 84

Claim 84 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over co-pending application 10/152,106.

Applicants have canceled claim 84 and this ground of rejection is moot.

PROVISIONAL REJECTION OF CLAIMS 84-93 AND 123

Claims 84-93 and 123 are provisionally rejected, under the judicially created doctrine of obviousness-type double patenting as being unpatentable over co-pending application 10/652,962.

Applicants respectfully point out that co-pending application 10/652,962 was abandoned. Therefore, this ground of rejection is moot.

REJECTION OF CLAIMS 84-93 AND 123

Claims 84-93 and 123 stand rejected under 35 USC 102(a) as allegedly being inherently anticipated by, or in the alternative, under 35 USC 103(a) as allegedly being obvious in view of U.S. Patent No. 6,451,990 (hereinafter "Bayod") or U.S. Patent No. 6,268,489 (hereinafter "Allen").

Per agreement between Examiner Peselev and the undersigned, this rejection is moot in view of the cancellation of claim 84 and the amendments to claims 85 and 86. Accordingly reconsideration and withdrawal of this ground of rejection are respectfully requested.

REJECTION OF CLAIMS 84-93 AND 123

Claims 84-93 and 123 stand rejected under 35 USC 102(a) as allegedly being anticipated by, or in the alternative, under 35 USC 103(a) as allegedly being obvious over Allen.

Per agreement between Examiner Peselev and the undersigned, this rejection is moot in view of the cancellation of claim 84 and the amendments to claims 85 and 86 to delete reference to tetrahydrofuran. Accordingly reconsideration and withdrawal of this ground of rejection are respectfully requested.

CONCLUSION

In view of the claim amendments and the remarks, further and favorable considerations of the presently pending claims are respectfully requested.

It is believed that no fee is required for the consideration of this Amendment. However, if any fees are required, the Commissioner is authorized to charge such fees to our Deposit Account No. 16-1445.

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